

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

\* \* \*

Mauricio Jasso, et al.,  
Plaintiffs,  
v.  
Wells Fargo Bank, N.A., et al.,  
Defendants.

Case No. 2:20-cv-00858-RFB-BNW

**Order re In-Camera Review**

As part of its August 11, 2021 Order, this Court directed Defendant Wells Fargo Bank to provide certain documents to the Court for in-camera review in order to determine whether Wells Fargo had properly wielded the Suspicious Activity Report (“SAR”) privilege. ECF No. 80. Wells Fargo complied with the Order and submitted several documents for the Court to review. These include: (1) documents produced to Plaintiffs (as the SAR privilege was not implicated), (2) documents withheld from Plaintiffs on the basis that the SAR privilege applies, and (3) documents withheld from Plaintiffs on the basis that the documents did not relate to the parties to this lawsuit.

**I. BACKGROUND**

Plaintiffs allege that non-party Daniel Maza-Noriega conducted a Ponzi scheme with assistance and participation by Defendant Wells Fargo. Maza and Plaintiffs essentially grew up together as friends and family in Mexico. Later in life, Maza and Plaintiff Mauricio Jasso established JAMA as 50-50 co-owners. JAMA was used as a vehicle for Plaintiffs to invest funds into Maza’s own entity, First Prime Mortgage (“FPM”). Plaintiffs were led to believe that their funds were being invested by Maza and FPM into foreclosed U.S. real estate. The supposed plan

1 was that FPM would renovate the real estate and sell it at a premium to a Chinese investment  
2 company.

3 According to the JAMA investment agreements, investors would receive a 30 percent or  
4 higher return. However, Plaintiffs allege that once funds reached the FPM Wells Fargo accounts,  
5 Maza would simply funnel his investors' millions into one of his other multitude of Wells Fargo  
6 checking accounts and, soon after, he would use the money to pay off his wife's American  
7 Express Black Card or wire the money offshore to Russia, Hong Kong, Mexico, Canada, or  
8 somewhere in Europe.

9 According to Plaintiffs, Maza initially tried opening the JAMA account at Citibank, Bank  
10 of America, and JPMorgan Chase. However, each of these banks closed Maza's accounts after  
11 only one month, allegedly because of fraudulent activity. Maza eventually turned to Wells Fargo,  
12 where he maintained the FPM accounts for some time. Wells Fargo employee/individual  
13 Defendant Katherine Darrall supposedly insisted that Citibank was at fault for the closure of  
14 Maza's accounts, and she explained to Jasso that Maza was an "excellent performer" and "one of  
15 our best clients." Individual Defendant Jose Rico was also a Wells Fargo banker during the events  
16 alleged in the complaint, and he supposedly joined Darrall in making statements about the success  
17 of FPM and Maza. Jasso conveyed these supposed assurances to the other Plaintiffs.

18 Based on these assurances, Plaintiffs invested additional millions into Wells Fargo's  
19 accounts. Eventually, after Plaintiffs invested \$25 million (and reinvested \$15 million) into FPM,  
20 Jasso demanded to see the FPM account balances. Jasso revealed that the accounts contained a  
21 negative balance of \$1,000. The underlying lawsuit followed, and Plaintiffs assert claims for  
22 negligence, aiding and abetting breach of fiduciary duty, fraudulent misrepresentation, fraudulent  
23 inducement, fraudulent concealment, and civil conspiracy.

## 24 **II. LEGAL STANDARDS**

25 Discovery is broad. *Jackson v. Montgomery Ward & Co.*, 173 F.R.D. 524, 528 (D. Nev.  
26 1997). Parties may obtain discovery on any nonprivileged matter relevant to any party's claim or  
27 defense and proportional to the needs of the case. Fed. R. Civ. P. 26(b)(1). The court "must" limit  
28 discovery if it determines that the discovery sought "is unreasonably cumulative or duplicative, or

1 can be obtained from some other source that is more convenient, less burdensome, or less  
 2 expensive.” Fed. R. Civ. P. 26(b)(2)(C). The same applies when the party seeking discovery has  
 3 had ample opportunity to obtain the information by discovery in the action or when the proposed  
 4 discovery is outside the scope of Rule 26(b)(1). *Id.* The court has broad discretion to permit or  
 5 deny discovery, and its decision will not be disturbed “except upon the clearest showing” that the  
 6 denial “results in actual and substantial prejudice to the complaining litigant.” *Hallett v. Morgan*,  
 7 296 F.3d 732, 751 (9th Cir. 2002).

8 **a. The Bank Secrecy Act and Suspicious Activity Reports**

9 Under the Bank Secrecy Act (“BSA”), the Secretary of the Treasury “may require any  
 10 financial institution . . . to report any suspicious transaction relevant to a possible violation of law  
 11 or regulation.” 31 U.S.C. § 5318(g)(1).

12 The Financial Crimes Enforcement Network (“FinCEN”) and Office of the Comptroller of  
 13 the Currency (“OCC”) have each issued relevant regulations. FinCEN requires a SAR when a  
 14 transaction involves at least \$5,000 and “the bank knows, suspects, or has reason to suspect that .  
 15 . . [t]he transaction involves funds derived from illegal activities or is intended or conducted in  
 16 order to hide or disguise funds or assets derived from illegal activities.” 31 C.F.R.  
 17 § 1020.320(a)(2)(i). Similarly, the OCC requires a bank to file a SAR when it “detect[s] a known  
 18 or suspected violation of Federal law or a suspicious transaction related to a money laundering  
 19 activity or a violation of the [BSA].” 12 C.F.R. § 21.11(a). Banks file their SARs with FinCEN.  
 20 31 C.F.R. § 1020.320(b)(2); 12 C.F.R. § 21.11(c).

21 If a bank makes a SAR, then it and its employees are prohibited from “notify[ing] any  
 22 person involved in the transaction that the transaction has been reported.” 31 U.S.C.  
 23 § 5318(g)(2)(A)(i). The implementing regulations by the FinCEN and OCC each similarly  
 24 prohibit a bank from disclosing a SAR, but also any information that “would” reveal the existence  
 25 of a SAR. 31 C.F.R. § 1020.320(e)(1)(i); 12 C.F.R. § 21.11(k)(1)(i). Both the FinCEN and OCC  
 26 have issued interpretive guidance stating that the disclosure prohibitions extend to no-SAR  
 27 decisions as well. 75 Fed. Reg. 75593, 75595 (Dec. 3, 2010) (“An institution also should afford  
 28

1 confidentiality to any document stating that a SAR has *not* been filed.”) (emphasis added); 75  
2 Fed. Reg. 75576, 75579 (Dec. 3, 2010) (“By extension, a national bank also must afford  
3 confidentiality to any document stating that a SAR has not been filed.”). The logic driving both of  
4 these interpretations is that if a bank were able to disclose “information when a SAR is not filed,  
5 institutions would implicitly reveal the existence of a SAR any time they were unable to produce  
6 records because a SAR was filed.” 75 Fed. Reg. 75593, 75595 (Dec. 3, 2010); *accord* 75 Reg.  
7 75576, 75579.

8 Stated plainly, then, “the key query is whether any . . . documents suggest, directly or  
9 indirectly, that a SAR was or was not filed.” *In re JPMorgan Chase Bank, N.A.*, 799 F.3d 36, 43  
10 (1st Cir. 2015). When the OCC promulgated its final regulations, it emphasized that “the strong  
11 public policy that underlies the SAR system as a whole . . . leans heavily in favor of applying  
12 SAR confidentiality not only to a SAR itself, but also in appropriate circumstances to material  
13 prepared by the national bank as part of its process to detect and report suspicious activity,  
14 regardless of whether a SAR ultimately was filed or not.” 75 Fed. Reg. 75576-01, 75579 (Dec. 3,  
15 2010). To that end, some courts have held that “documents which have been prepared as part of a  
16 national bank’s process for complying with federal reporting requirements are covered by the  
17 SAR privilege.” *Lan Li v. Walsh*, 2020 WL 5887443, at \*2 (S.D. Fla. Oct. 5, 2020).

18 There are limitations to the scope of the SAR. The regulations provide that the disclosure  
19 prohibition does not extend to “[t]he underlying facts, transactions, and documents upon which a  
20 SAR is based.” *See, e.g.*, 31 C.F.R. § 1020.320(e)(1)(ii)(A)(2); *accord Cotton v. Private Bank and*  
21 *Trust Co.*, 235 F. Supp. 2d 809, 815 (N.D. Ill. 2002) (“Documents which give rise to suspicious  
22 conduct . . . are to be produced in the ordinary course of discovery because they are business  
23 records made in the ordinary course of business”). Plus, the use of the term “would” in the  
24 regulations has been construed to mean that “review of the document must” reveal “with effective  
25 certainty the existence of a SAR.” *First Am. Title Ins. Co. v. Westbury Bank*, 2014 WL 4267450,  
26 at \*2 (E.D. Wis. Aug. 29, 2014). “[I]nformation that, with aid of supposition or speculation,  
27 might tend to suggest to a knowledgeable reviewer whether a SAR was filed, is not privileged.”  
28 *Id.*

1 To the extent the SAR privilege applies, it “is unqualified and cannot be waived.” *Id.*

2 **III. IN-CAMERA REVIEW OF WITHHELD DOCUMENTS**

3 Wells Fargo submitted 21 documents for in-camera review that it withheld on the basis  
4 that the SAR privilege applied. After considering the relevant standards, the Court finds that these  
5 documents were properly withheld. These documents include Excel spreadsheets, bank  
6 documents, bank platform screenshots, and a Wells Fargo e-mail. It does not appear that the  
7 documents constitute “[t]he underlying facts, transactions, and documents upon which a SAR is  
8 based.” *See* 31 C.F.R. § 1020.320(e)(1)(ii)(A)(2). Instead, the Court finds that the withheld  
9 documents “suggest, directly or indirectly, that a SAR was or was not filed.” *In re JPMorgan*  
10 *Chase Bank, N.A.*, 799 F.3d at 43. The Court considered whether redaction would be appropriate.  
11 It determined that the amount of redaction that would be necessary in order to maintain the SAR  
12 privilege would yield an incomprehensible document.

13 Wells Fargo also submitted eight documents for in-camera review that it withheld on the  
14 basis that the documents did not relate to the parties to this lawsuit. After reviewing those  
15 documents, it would appear the documents are not related to the parties in this lawsuit.<sup>1</sup>

16 **IV. CONCLUSION**

17 Having reviewed Wells Fargo’s in-camera submission and considered the relevant legal  
18 standards, the Court finds that Wells Fargo has properly withheld the documents contained in the  
19 in-camera submission on the basis of the SAR privilege.

20  
21 DATED: September 23, 2021

22  
23 

24 BREND A WEKSLER  
25 UNITED STATES MAGISTRATE JUDGE

26  
27  
28 <sup>1</sup> Not knowing the details of the underlying facts, the Court relies heavily on the representations of  
counsel for Wells Fargo for that determination.